

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL and STACEY LANE,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
ABS a/k/a ADVANCED BUILDING	:	
SYSTEMS, INC.,	:	
Defendant / Third Party Plaintiff,	:	
	:	
v.	:	
	:	
WALKER SYSTEMS, INC.	:	
Third Party Defendant.	:	NO. 98-1516

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY 13, 1999

Presently before the Court are Plaintiffs Michael and Stacey Lane's Motion for a Protective Order and Defendant Advanced Building System, Incorporated's Motion for an Order to Set the Fee of Plaintiffs' Expert. For the reasons that follow, the Court will deny Plaintiff's motion, and will order that Plaintiff submit to a psychiatric examination within twenty days of entry of the accompanying Order. The Court will hold a hearing on Defendant's motion on July 27, 1999.

Plaintiffs argue a protective order is necessary because they never placed Mr. Lane's mental condition in issue. True enough, they say, he has alleged emotional distress injuries, but these allegations, which they remind the Court are pled in almost every tort action, are not sufficient to warrant a psychiatric examination. Similarly, Plaintiffs argue Mr. Lane's visits with a psychiatrist, a psychologist, and a host of neuropsychologists, all claimed to be a result of Defendant's alleged tortious activities, do not inject Mr. Lane's mental state in this case.

Defendant believes this case is all about Mr. Lane's mental state. It intends to present a defense that his alleged physical injuries are borne out of his pre-existing emotional problems. Moreover, Defendant points out Plaintiffs themselves have placed Mr. Lane's mental state in issue by including bills for psychological treatment in their damages claim.

Mr. Lane's mental state is more than sufficiently in issue to satisfy the requirements of either Schlagenhauf v. Holder, 379 U.S. 104 (1965), or Federal Rule of Civil Procedure 35(a). His mental condition prior to and at the time of the accident is plainly in controversy, and Defendant has made the showing of "good cause" that entitles it to compel Mr. Lane to undergo a psychiatric examination. See Schlagenhauf, 379 U.S. at 119-20. Further, the Court finds this examination is justified even if there is no "good cause" because Plaintiffs put Mr. Lane's mental state in controversy. Fed. R. Civ. P. 35(a). The Court therefore will order Mr. Lane to submit to an examination by Dr. Timothy Michals at a time mutually convenient to the parties and Dr. Michals.

An Order follows.

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ABS a/k/a ADVANCED BUILDING	:	
SYSTEMS, INC.,	:	
Defendant / Third Party Plaintiff,	:	
	:	
v.	:	
	:	
WALKER SYSTEMS, INC.	:	
Third Party Defendant.	:	NO. 98-1516

ORDER

AND NOW, this 13th day of July, 1999, upon consideration of the parties' motions, it is hereby **ORDERED**:

1. Plaintiffs' Motion for a Protective Order (Document No. 25) is **DENIED**, and Michael Lane is ordered to submit to an examination conducted by Dr. Timothy Michals at a time mutually convenient to Dr. Michals and the parties within twenty (20) days of the date of this Order; and
2. The Court will hear oral argument on Defendant's Motion to Set Fee of Plaintiffs' Expert Economist on July 27, 1999, at 9:30 A.M. in Courtroom 8A of the U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

BY THE COURT:

JAMES McGIRR KELLY, J.